copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Vincent de Jesus, Office of Nutrition and Food Labeling, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1450, *vincent.dejesus@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 29, 2022 (87 FR 59168), we published a proposed rule entitled ''Food Labeling: Nutrient Content Claims; Definition of Term 'Healthy'.'' This action opened a docket with a 90-day comment period to receive information and comments related to the definition for the implied nutrient content claim ''healthy.''

FDA has received a request for a 90-day extension for this comment period in order to allow additional time for interested persons to develop and submit comments. The request conveyed concern that the current 90-day comment period does not allow sufficient time to develop meaningful comments to the proposed rule. In the interest of balancing the public health importance of the nutrient content claim and definition of the term ''healthy'' and granting additional time to submit comments before we finalize the proposed rule, we have concluded that it is reasonable to extend the comment period for 50 days, until February 16, 2023. We believe that this extension allows adequate time for interested persons to submit comments.

Dated: November 22, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–26002 Filed 11–28–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AQ58

Collection or Recovery by VA for Humanitarian Care or Services and for Certain Other Care and Services

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to revise its regulations concerning reimbursement rates for health care that VA provides to individuals who are not otherwise eligible for such care as veterans or other VA beneficiaries. Specifically, this rulemaking would revise provisions of VA regulations and make them consistent with applicable law along with removing obsolete provisions. These revisions would clarify VA regulations related to the provision of VA health care to individuals who are not otherwise eligible for such care as veterans or other VA beneficiaries, and it would not substantively affect the provision of health care to eligible veterans or other VA beneficiaries.

DATES: Comments must be received by VA on or before January 30, 2023.

ADDRESSES: Comments may be submitted through *www.regulations.gov*. Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. Comments received before the close of the comment period on *www.regulations.gov* will be posted as soon as possible after they have been received. VA will not post public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

FOR FURTHER INFORMATION CONTACT: Debra Vatthauer, Office of Finance, Revenue Operations, Payer Relations and Services, Rates and Charges (104RO1), Veterans Health Administration, Department of Veterans Affairs, 128 Bingham Road, Suite 1000, Asheville, NC 28806; telephone: 608–821–7346 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The primary purpose of this rulemaking is to clear up internal confusion related to ineligible Civilian Health and Medical Program of VA (CHAMPVA) beneficiaries not being billed for services and this rulemaking will also clarify the applicable regulations organization, authority and any cross references. There are several statutory authorities that allow for VA to provide care to individuals who would not generally be eligible to receive VA health care. While these authorities allow VA to provide the care, these authorities also require VA to charge for the vital services it provides Section 205 of the appropriations act does not allow appropriations for hospitalization or examination of ineligible individuals, unless reimbursement of the costs of their care is made at a rate determined by VA. Several VA authorities, as codified in title 38 also require VA to charge for care at rates prescribed by the Secretary. Notably, under section 1784 of title 38, United States Code (U.S.C.), VA provides medical care or services as a humanitarian service in emergency cases to individuals not generally eligible to receive such care or services from VA, but is also required to charge for those care and services at rates prescribed by the Secretary. Under 38 U.S.C. 1785, during and in the immediate aftermath of an emergency or natural disaster, VA may furnish hospital care and medical services to individuals responding to, involved in, or otherwise affected by that disaster or emergency, but is required to charge the recipient. Under 38 U.S.C. 8111, VA is authorized to enter into sharing agreements with the Department of Defense (DoD) for the use or exchange of use of health care resources, and VA may bill DoD for certain medical services obtained from VA. VA may also provide medical care to certain discharged members of allied forces consistent with 38 U.S.C. 109 and must enter into agreements for cash reimbursement of incurred expenses at such rates and under such regulations as the Secretary may prescribe. Section 17.102 of title 38, Code of Federal Regulations (CFR) addresses when and how it determines the rate VA will charge for medical care and services provided to individuals under all four authorities described above.

During the COVID–19 pandemic VA has provided significant amounts of care to individuals under the Stafford Act via Mission Assignments from the Federal Emergency Management Agency (FEMA) within the Department of Homeland Security which is distinct from care VA provides under our authority in 38 U.S.C. 1785 described above. The care provided under the Stafford Act via Mission Assignments would not be impacted by the changes made to 38 CFR 17.102 in this rulemaking.

VA is generally required by law, however, to charge for care provided to otherwise ineligible individuals generally at rates determined by the Secretary. VA has been charging for this care in accordance with 38 CFR 17.102 for many years. This rulemaking updates and clarifies when individuals will be charged for this care.

This proposed rule would primarily reorganize for clarity 38 CFR 17.102, which lists instances when VA provides health care based on various changes in the determination of veteran eligibility and based on VA's authorities to provide certain health care to individuals who are not otherwise eligible to receive such care from VA. Section 17.102 also establishes rates VA charges for the care. However, § 17.102, did not reference the specific authorities for VA to provide health care in each circumstance, and this section does not include all circumstances when VA provides care, to individuals who are otherwise ineligible to receive care from VA. This proposed rule would revise § 17.102 to add citations to and harmonize these authorities. Also, the proposed rule would remove unnecessary provisions in § 17.102, and it would establish a new data source to calculate the rates charged for the care provided pursuant to this regulation. This proposed rule would similarly revise regulations that relate to or reference § 17.102, or otherwise relate to certain health care VA provides to individuals who are not eligible to receive the care as veterans or other VA health care beneficiaries. We first discuss proposed changes to § 17.102.

Section 17.102 Charges for Care or Services

This proposed rule would revise 38 CFR 17.102 to include additional categories of normally ineligible individuals who may receive health care services from VA, remove provisions that have become obsolete, and update the authorities for VA to provide the health care services. The proposed rule would also clarify the difference between the two types of rates charged under this section: the Cost-Based Rates and the Inter-Agency Rates. In so doing, we propose to reorganize the structure of § 17.102 for clarity.

The table below reflects proposed changes to the structure of § 17.102. The current section and paragraph are noted in the left column, with the proposed new location in column three. Paragraphs that we propose to remove are listed in column two. We will discuss the rationale for removing specific paragraphs, as well as any proposed revisions and additions to current regulatory language.

Current 17.102	Proposed to be removed	Proposed 17.102
17.102(a)		17.102(b)(1)
17.102(b)(1)		17.102(a)(1)
17.102(b)(2)	X	
17.102(c)		17.102(a)(5)
17.102(d)		17.102(b)(2)
17.102(e)		17.102(b)(3)
17.102(f)		17.102(a)(6)
17.102(g)	X	
17.102(h)		17.102(c)

The introductory language of 38 CFR 17.102 currently states that ''[e]xcept as provided in § 17.101, charges at the indicated rates shall be made for Department of Veterans Affairs hospital care or medical services (including, but not limited to, dental services, supplies, medicines, orthopedic and prosthetic appliances, and domiciliary or nursing home care) as follows.'' First, we would amend the introductory language to reference proposed § 17.102(c) which would establish the reimbursement rates. Current reimbursement rates are established in § 17.102(h). We explain the proposed changes to the data source used to develop the rates and re-designating from paragraph (h) to paragraph (c) later in this rulemaking.

Next, we would amend the introductory language to indicate that the rates established in § 17.102 would apply ''notwithstanding'' the rates established in § 17.101. This would clarify that the rate structures in §§ 17.101 and 17.102 are mutually exclusive. While the rates under § 17.102 are used to recover costs of VA care provided to individuals who are otherwise ineligible for the care, the rates in § 17.101 implement VA's authority in 38 U.S.C. 1729 to recover reasonable charges from a third party for non-service connected VA care provided to an eligible veteran who is also a beneficiary under a health-plan contract, workers compensation law, or automobile accident reparations insurance.

We would also amend the introductory language in § 17.102 to replace the current list of examples of medical services (*i.e.,* ''. . . dental services, supplies, medicines, orthopedic and prosthetic appliances, and domiciliary or nursing home care . . . '') and would state instead that VA will charge for ''care and services.'' VA is making this change to avoid the potential misinterpretation of this list as exhaustive. Substituting the list of examples for ''care and services'' allows for change in the future and is in line with current Veterans Health Administration (VHA) regulation drafting tenets. Other proposed revisions to § 17.102 would further distinguish whether ''hospital care and medical services'' could be provided and charged to certain individuals, versus the broader scope of ''hospital care, medical services, domiciliary care, or nursing home care.'' This change would make the introductory language to § 17.102 more consistent with VA authorities to provide and charge for only certain health care to individuals not otherwise eligible to receive such care as VA beneficiaries.

Lastly, we would amend the introductory language in § 17.102 to indicate clearly that this section relates to care and services provided in the circumstances listed in paragraphs (a) and (b).

Current paragraphs (a) through (g) list instances when care and services are furnished to non-veterans and non-VA

beneficiaries. We would modify the organization of paragraphs (a) through (g) for clarity and would remove obsolete or unnecessary paragraphs as explained.

Generally, proposed paragraph (a) would describe charges that arise from the provision of ''hospital care or medical services,'' and proposed paragraph (b) would describe charges that arise from the provision of the broader scope of ''hospital care, medical services, domiciliary care, or nursing home care.'' We believe this would be consistent with how distinct these four terms are from one another as defined in 38 U.S.C. 101 and 1701, and it also would be consistent with current VA authorities. For example, VA only has the authority to provide ''hospital care and medical services'' as a humanitarian service in emergency cases and not domiciliary or nursing home care. 38 U.S.C. 1784. The instances when VA provides each type of care would be listed following paragraphs (a) and (b), respectively.

Proposed paragraph (a)(1) would state that VA would charge for hospital care and medical services that could be provided to individuals as a humanitarian service. This proposed revision would re-designate current paragraph (b) as paragraph (a)(1). We would remove references to § 17.41(b)(1) or § 17.95 and would instead reference the underlying statutory authority 38 U.S.C. 1784 and 1784A. Section 1784 provides the statutory authority for VA to provide care as a humanitarian service. Section 1784A provides the statutory authority for VA to provide care for examination and treatment for emergency medical conditions and women in labor. We note that section 1784A was not previously referenced in this regulation because it had not been enacted at the time of the most recent previous revision of § 17.102. However, we believe that this care broadly falls under the category of humanitarian care. Therefore, it is appropriate to list it together with the care provided under section 1784.

Proposed paragraph (a)(1) would not retain the language from current paragraph (b)(2) related to emergency medical care provided separately to VA employees or their family members. We would not retain this language since there is no general distinction in the statute between individuals or VA employees and their families. The inclusion of a separate category for VA employees and their families has been included in the CFR since 1967 and the **Federal Register** notice creating it, 32 FR 11382, offers no explanation for why it was originally included. VA employees and their families are subsumed in the class of individuals for whom VA may provide humanitarian care under section 1784. VA believes it is unnecessary to distinguish between the two groups of individuals under this section. VA charges for the provision of care as humanitarian care under 38 U.S.C. 1784 and 1784A, so we would not reference any other authority in proposed paragraph (a)(1). We note that the charges for care under this paragraph would be VA's Cost-Based Rates as described in paragraph (c), discussed in detail below.

Proposed paragraph (a)(2) would state that VA would charge for hospital care and medical services that would be provided to individuals during and immediately following a disaster or emergency. This is in accordance with 38 U.S.C. 1785 and the corresponding implementing regulation at 38 CFR 17.86. Proposed paragraph (a)(2) would add a new type of VA care to § 17.102 for which VA seeks reimbursement, but VA does not view this as a substantive change. Section 17.86 already requires reimbursement for this care and references § 17.102 to determine the rate for reimbursement. We are also proposing to amend § 17.86(e), as discussed in further detail below, to clarify the rates of reimbursement pursuant to section 1785 and to update the reference to § 17.102 considering its proposed reorganization. We note that the rates VA would charge for this care are based on either the Cost-Based or the Inter-Agency Rate depending on whether the beneficiary of the care was authorized by a Federal agency to receive care. Proposed § 17.86(e) would provide a detailed description of all the charges. Proposed paragraph (a)(2) would reference 38 U.S.C. 1785 and 38 CFR 17.86.

Proposed paragraph (a)(3) would state that VA would charge for emergency medical treatment provided to an individual attending a national conference in accordance with 38 U.S.C. 1711. VA would charge, either the individual or the organization, pursuant to a contract. The organization must be recognized under 38 U.S.C. 5902. VA's authority to provide this care to individuals at such a national conference, under 38 U.S.C. 1711, was first promulgated in regulation in 1982, then designated as 38 CFR 17.62(i) [47 FR 58249 (December 30, 1982)]. This provision remained in annual print editions of the CFR from 1982 through 1999, at which time § 17.62 was redesignated as § 17.101 (see 61 FR 21964, where § 17.62(i) became § 17.101(i)). Later § 17.101 was redesignated as § 17.102 (see 64 FR 22676, where § 17.101(i) became § 17.102(i)). VA did not remove this provision since we first promulgated it in 1982. However, the provision regarding hospital care and medical services provided to an individual attending a national conference of an organization recognized under 38 U.S.C. 5902 failed to appear in the annual print editions of the CFR after 1999, although VA never instituted any type of rulemaking to remove it. Proposed paragraph (a)(3) would correct the inadvertent removal of this provision, as the underlying statutory authority at 38 U.S.C. 1711(c)(1) is still in effect. We note that 38 U.S.C. 1711 mandates that VA be reimbursed for such care as prescribed by the Secretary. The care provided under this section would be charged for at VA's Cost-Based Rates.

Proposed paragraph (a)(4) would state that VA will charge for hospital care and medical services provided to an individual, in error, on the basis of eligibility as a non-veteran recipient of VA health care and services under title 38 of the United States Code. This would permit VA to collect charges for care provided in VA facilities to individuals who were thought to have been eligible to receive health care and services as non-veterans under particular VA authorities, such as care of allied beneficiaries as permitted by 38 U.S.C. 109, caregiver services as permitted by 38 U.S.C. 1720G, the CHAMPVA services as permitted by 38 U.S.C. 1781, mental health services as permitted by 38 U.S.C. 1782, and newborn care as permitted by 38 U.S.C. 1786. The authority for this substantive change is 31 U.S.C. 3711, which allows the head of an executive agency to collect a claim of the United States Government for money or property arising out of the activities of the agency. Additionally, section 205 of the Military Construction, Veterans Affairs, and Related Agencies Appropriations Act of 2022 states that, ''No appropriations in this title shall be available for hospitalization or examination of any persons (except beneficiaries entitled to such hospitalization or examination under the laws providing such benefits to veterans, and persons receiving such treatment under sections 7901 through 7904 of title 5, United States Code, or the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*)), unless reimbursement of the cost of such hospitalization or examination is made to the ''Medical Services'' account at such rates as may be fixed by the Secretary of Veterans Affairs.''

Proposed paragraph (a)(5) would state that VA would charge for medical care or services authorized for a beneficiary of the Department of Defense, or other Federal agency. This proposed revision would re-designate current 38 CFR 17.102(c) as paragraph (a)(5). Current § 17.102(c) provides that the rates for certain care in this paragraph would be prescribed by the Office of Management and Budget (OMB). We propose to remove this reference because VA began prescribing the rates in January 2004 [69 FR 1059 (January 7, 2004)]. We also propose removing the references to the specific rates that we would charge for care provided to an active service member or beneficiary of a Federal agency and former members of a uniformed service who are entitled to retired, retainer, or equivalent pay. We would make this change because all identified individuals are authorized beneficiaries, and all such care would be charged at the Inter-Agency Rate determined in proposed paragraph (c). We note that the rates as described in this section would only be used if the care is not covered under the active duty member's or veteran's TRICARE or under a valid sharing agreement. Finally, we would remove the reference in current § 17.102(c) to paragraph (f) related to care furnished for military retirees with chronic disabilities. We would make this change because, as explained below, care furnished for military retirees with chronic disabilities would be charged at the same rates as the care furnished in proposed paragraph (a)(5). Therefore, it is not necessary to make the distinction.

Proposed paragraph (a)(6) would state that VA would charge for hospital care for certain retirees of the uniformed services with a chronic disability, as described in Executive Orders 10122, 10400, and 11733, and 38 CFR 17.44. This proposed revision would re-designate current paragraph (f) as paragraph (a)(6) and would make the paragraph more consistent with its authorities. Current paragraph (f) states that charges under this section are for subsistence at rates prescribed by the Under Secretary for Health under § 17.47(b)(2) and (c)(2) for hospital care and in effect during the time VA renders the care. We propose to change the rate that would be charged from the subsistence rate to a rate prescribed by the Secretary (*i.e.,* the Inter-Agency rate). VA does not currently have a subsistence rate and believes that charging the Inter-Agency Rate is more consistent with the way VA generally charges for health care services. Furthermore, we propose to remove the reference to § 17.47. Instead, we would reference the more relevant authorities of Executive Orders 10122, 10400, 11733, and 38 CFR 17.44. Executive orders and § 17.44 directly authorize the care provided. Comparatively, § 17.47(b)(2) merely defines the phrase ''no adequate means of support'' for the purpose of determining eligibility for domiciliary care and there is no § 17.47(c)(2) (the information in § 17.47(c)(2) has already been consolidated into § 17.47(c)). 51 FR 25064 (July 10, 1986).

As previously stated, proposed paragraph (b) would list instances when hospital care, medical services, domiciliary care, or nursing home care are provided. Proposed paragraph (b)(1) would state that VA would charge for hospital care, medical services, domiciliary care, or nursing home care provided to an individual, in error, on the basis of veteran eligibility for such care and services under 38 CFR 17.34, 17.36, or 17.37, and such an individual was subsequently determined not to have been eligible for such care or services. This proposed revision would re-designate paragraph (a) as paragraph (b)(1), and it would revise the references to veteran eligibility for health care. Care provided under these circumstances would be charged at the Cost-Based Rates.

Proposed paragraph (b)(2) would state that VA would charge for hospital care, medical services, domiciliary care, or nursing home care provided to a discharged member of the armed forces of a nation allied with the United States in World War I or World War II in accordance with 38 U.S.C. 109. This proposed revision would re-designate paragraph (d) as paragraph (b)(2). It would add a reference to 38 U.S.C. 109, which is VA's statutory authority to provide and receive reimbursement for hospital care, medical services, and domiciliary care for allied beneficiaries. We note that section 109 does not expressly authorize the provision of nursing home services to allied beneficiaries, so the language ''in accordance with 38 U.S.C. 109'' in proposed paragraph (b)(2) should be sufficiently limiting without having to propose a separate paragraph in § 17.102 to address provision of hospital care, medical services, and domiciliary care but not nursing home care. Proposed paragraph (b)(2) would apply to care that is authorized to be provided under section 109, while proposed paragraph (a)(4) would apply if care was provided in error based on a finding of eligibility under section 109, but the individual was subsequently found not to be eligible. We note that the rates for this care would be the Cost-Based Rates.

Proposed paragraph (b)(3) would state that VA would charge for hospital care, medical services, domiciliary care, or nursing home care provided under a sharing agreement in accordance with 38 U.S.C. 8111 or 8153 and 38 CFR 17.240. This proposed revision would re-designate current paragraph (e) as proposed paragraph (b)(3), and it would more succinctly restate the language in paragraph (e) by referring if only to the authorities related to VA sharing agreements and VA sharing of medical resources under 38 U.S.C. 8111 and 8153, respectively, as well as implementing VA regulation at 38 CFR 17.240. This paragraph would likely be used when VA enters into a sharing agreement with another federal entity, such as the Department of Defense, or participates in the sharing of medical resources between entities.

Proposed paragraph (b)(4) would state that VA would charge the rates established in paragraph (c), the Cost-Based or the Inter-Agency Rates, for any other care that VA is authorized to provide, at a cost, to an individual who is otherwise ineligible for VA care. This new paragraph would instruct how VA would charge for care when VA has authority to provide such care at a cost but does not have guidance on how to charge for the care. This paragraph would likely be used when Congress authorizes VA to provide care under new circumstances.

Current paragraph (g) in § 17.102 would be removed because VA examined the regulatory history and found that the requirement was obsolete and unnecessary. Specifically, current paragraph (g) establishes that VA must reimburse its medical care appropriation fund out of its research appropriation fund when VA provides treatment to research study participants who are otherwise ineligible for that care as veterans. The management of VA's appropriations, such as reimbursement of one fund from another, is an internal fiscal procedure and does not require authorization in regulation unless otherwise specified in law. To date, there is no law that specifies that VA must regulate the transfer of these funds. We, therefore, propose to remove paragraph (g).

Current paragraph (h) establishes the rates that VA charges for care provided under § 17.102, unless the rates are otherwise established under a sharing agreement or contract. Current § 17.102(h) would be redesignated as proposed paragraph (c), and we would revise it to refer to a different VA data source and data report that we use to

establish the rates under § 17.102. These slight revisions would state that rates charged for care provided under § 17.102 would be based on ''VHA Office of Finance Managerial Cost Accounting (MCA) Cost Reports,'' as opposed to being based on the ''Monthly Program Cost Report'' as stated in current paragraph (h). Proposed paragraph (c) would also remove the stated rate methodology in current paragraph (h), as this information is published with the rate tables. VA publishes the rate table for § 17.101 on its website and for consistency, and ease of access, VA would publish the § 17.102 rates on a website where the public could access the rates, OMB has not been involved in publishing these rates since 2014 and we would remove reference to the option of OMB publishing the rates. Therefore, we believe this would be a non-substantive change because the public understands these annually published rates.

Proposed paragraph (c) would also include the methodology to determine the rates for prescription drugs that VA furnishes which are not administered during treatment. The costs would be based on the actual cost of the drug plus a national average of VA administrative costs as described in 38 CFR 17.101(m).

Section 17.43 Persons Entitled to Hospital or Domiciliary Care

This section lists persons entitled to hospital or domiciliary care. Specifically, § 17.43(b) lists the three categories of persons entitled to emergency hospital care. Paragraph (b)(1) includes persons having no eligibility, as a humanitarian service. Paragraph (b)(2) includes persons admitted because of presumed discharge or retirement from the Armed Forces, but subsequently found to be ineligible as such. Paragraph (b)(3) includes employees (not potentially eligible as ex-members of the Armed Forces) and members of their families, when residing on reservations of VA field facilities, and when they cannot feasibly obtain emergency treatment from private facilities. We propose to remove paragraph (b)(3) because it places an unnecessary restriction on VA employees and their families' ability to receive hospital care at a VA facility during an emergency.

VA has authority to provide hospital care in an emergency to all VA employees and their families. Section 1784 of title 38 of the United States Code provides that VA may furnish hospital care or medical services as a humanitarian service in emergency cases so long as the Secretary charges for such care and services. In addition, 38 U.S.C. 1784A provides that if any individual comes to the hospital or the campus of the hospital and a request is made on behalf of the individual for examination or treatment for a medical condition, then the hospital must provide for an appropriate medical screening examination within the capability of the emergency department. This medical screening examination would include ancillary services routinely available to the emergency department to determine whether an emergency medical condition exists. Further, the implementing regulation at 38 CFR 17.43(b)(1) provides that emergency hospital care may be provided for persons having no eligibility as a humanitarian service. Therefore, we believe that 38 U.S.C. 1784, as implemented by 38 CFR 17.43(b)(1), provides VA authority to provide hospital care to all individuals in an emergency, including VA employees and their families, regardless of whether they are residing on a field reservation or can feasibly obtain emergency treatment from private facilities.

We note that 38 CFR 17.95, whose authority also stems from 38 U.S.C. 1784, provides that outpatient medical services (as opposed to hospital care) may be authorized for VA employees, their families, and the general public in emergencies. There are no restrictions placed on VA employees and their families when seeking VA outpatient care in an emergency.

Therefore, we propose to remove paragraph (b)(3) as the individuals covered under this paragraph are subsumed within paragraph (b)(1), and VA believes it is inequitable and unjustified that VA employees and their families who are not covered under paragraph (b)(3) should be prohibited from receiving VA hospital services in emergencies when VA has clear authority under 38 U.S.C. 1784 to provide such care.

Section 17.44 Hospital Care for Certain Retirees With Chronic Disability (Executive Orders 10122, 10400 and 11733)

This section provides that hospital care may be furnished, when beds are available, to members or former members of the uniformed services who are temporarily or permanently retired for physical disability or receiving disability retirement pay who require hospital care for chronic diseases and who have no eligibility for hospital care under laws governing the Department of Veterans Affairs, or who having eligibility do not elect hospitalization as Department of Veterans Affairs beneficiaries. Care under this section is subject to three conditions. The first condition described in paragraph (a), which is most pertinent here, requires persons who are members or former members of the United States Armed Forces to agree to pay the subsistence rate set by VA, except that no subsistence charge would be made for those persons who are members or former members of the Public Health Service, Coast Guard, Coast and Geodetic Survey (now the National Oceanic and Atmospheric Administration). This also applies to enlisted personnel of the Army, Navy, Marine Corps, Air Force, and Space Force.

This regulation was originally enacted in 1969 (34 FR 9340 June 13, 1969), and it has not been substantively revised since that time. This subsistence rate language seems to be a hold over from earlier practice of charging a subsistence rate for daily food/incidentals for certain members during a hospitalization if that member is receiving Basic Allowance for Subsistence (BAS). BAS is a Department of Defense (DOD) program meant to offset costs for a member's meals. This allowance is based in the historic origins of the military in which the military provided room and board (or rations) as part of a member's pay. VA does not currently use, nor does the Secretary of Veterans Affairs set subsistence rates. Therefore, the regulation is inconsistent with current practice. Due to this, we propose to remove the word ''subsistence'' from paragraph (a), and we would require persons defined in this section to agree to pay a rate set by VA, as prescribed in § 17.102(c). VA believes that using the rates established in § 17.102(c) (the VHA Office of Finance MCA Cost Report) is consistent with the authority to provide care as described in Executive Orders 10122, 10400, and 11733. In the Executive Orders, the President authorized VA to provide the care and charge for the care, but the Executive Orders do not specify the rate VA should charge. VA believes that it has the authority to determine the most appropriate rates to charge for this care, and we find that charging the rate that is used for other otherwise ineligible veterans and non-veteran beneficiaries is appropriate.

Section 17.86 Provision of Hospital Care and Medical Services During Certain Disasters and Emergencies Under 38 U.S.C. 1785

We propose to revise paragraph (e) for clarity and to update the reference to § 17.102 to conform to the proposed

revisions of § 17.102 previously described. As the authorizing statute, 38 U.S.C. 1785, describes how VA should be reimbursed in various instances, we propose to revise paragraph (e) by listing each category of person identified in section 1785 and state how VA would charge for their care. The proposed changes are technical in nature, and we are not proposing any substantive revisions to this section.

Proposed paragraph (e) would state that the cost of medical care and services provided under this section would be determined by the situations described below. Proposed paragraph (e)(1) would state that if care is provided to an officer or employee of a non-VA department or agency of the United States, VA will charge the rate agreed upon by the Secretary and the head of such department or agency or the Secretary concerned. If no such rate has been agreed to, VA would charge the Inter-Agency Rates as prescribed in § 17.102(c). VA believes that the Inter-Agency Rate is the most appropriate rate in this context and complies with 38 U.S.C. 1785. In § 1785(d), Congress directs that the cost of care or services furnished under this section to an officer or employee of a department or agency of the United States shall be reimbursed at such rates as may be agreed upon by the Secretary and the head of such department or agency of the Secretary concerned. The Inter-Agency Rates are the generally agreed upon rates between VA and other Federal agencies.

Although current § 17.86 includes member of the Armed Forces in the same sentence as an officer or employee of a non-VA department or agency of the United States, to more closely follow the authority in 38 U.S.C. 1785(d), we propose to have separate paragraphs to describe the rates for care provided to an officer or employee of a department or agency of the United States and the rates for care for members of the Armed Forces, as these individuals are referred to separately in the statute. Therefore, even though the Inter-Agency Rate would be charged in both circumstances, the regulation would more closely follow the statute to have separate paragraphs for each group identified by statute.

Proposed paragraph (e)(2) would state that if care is provided to a member of the Armed Forces, then VA would charge the rate agreed upon by the Secretary and the head of the branch of the Armed Forces or the Secretary concerned. If no rate has been agreed to, VA would be reimbursed at the Inter-Agency Rates as prescribed in § 17.102(c). VA believes that the Inter-Agency Rates are the most appropriate rates to charge for these individuals. Per 38 U.S.C. 1785(d) VA may be reimbursed based on the cost of the care or service furnished to members of the Armed Forces. The Inter-Agency Rate is based on VA cost that is specifically used to determine reimbursable charges from other Federal agencies, such as the Department of Defense.

Proposed paragraph (e)(3) would state that if the care is authorized under a sharing agreement as described in 38 U.S.C. 8111 or 8153 and 38 CFR 17.240, VA would be reimbursed at the rate determined in accordance with the terms of the sharing agreement.

Proposed paragraph (e)(4) would state that if the care is provided to an individual who is responsible for the cost of the care, VA would charge the Cost-Based Rate as prescribed in § 17.102(c). We would note that individuals would be responsible for the cost of care or services if mandated by Federal law (including applicable appropriations acts) or when the cost of care or services is not reimbursed by other-than-VA Federal departments or agencies. We believe that the Cost-Based Rates are the most appropriate for these individuals because the Cost-Based Rates are generally charged for care provided to individuals who are not beneficiaries of other Federal agencies or otherwise eligible for care from VA, as is required by the intent of appropriations act 205. The Cost Based Rate reflects the cost to VA to provide care to this non eligible individual and is explained in the yearly rate update.

Paperwork Reduction Act

This proposed rule contains no collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would affect only individuals and other Federal agencies. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs determined that this proposed rule is a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Assistance Listing

The Assistance Listing program numbers and titles for the programs affected by this document are Veterans Domiciliary Care; 64.011—Veterans Dental Care; 64.012—Veterans Prescription Service; 64.013—Veterans Prosthetic Appliances; 64.014—Veterans State Domiciliary Care; 64.015—Veterans State Nursing Home Care; 64.026—Veterans State Adult Day Health Care; 64.029—Purchase Care Program; 64.033—VA Supportive Services for Veteran Families Program; 64.039—CHAMPVA; 64.040—VHA Inpatient Medicine; 64.041—VHA Outpatient Specialty Care; 64.042—VHA Inpatient Surgery; 64.043—VHA Mental Health Residential; 64.044—VHA Home Care; 64.045—VHA Outpatient Ancillary Services; 64.046—VHA Inpatient Psychiatry; 64.047—VHA Primary Care; 64.048—VHA Mental Health clinics; 64.049—VHA Community Living Center; 64.050—VHA Diagnostic Care; 64.053.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health

records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 27, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Consuela Benjamin,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons discussed in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 is amended by adding entries for §§ 17.43, 17.44, 17.86, and 17.102 in numerical order to read in part as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

* * * * *

Section 17.43 also issued under 38 U.S.C. 109, 1784, 8111, and 8153.

Section 17.44 also issued under E.O. 10122, 15 FR 2173, 3 CFR, 1949–1953 Comp., p. 313, E.O. 10400, 17 FR 8648, 3 CFR, 1949–1953 Comp., p. 900, and E.O. 11733, 38 FR 20431, 3 CFR, 1971–1975 Comp., p. 792.

* * * * *

Section 17.86 also issued under 38 U.S.C. 1785.

* * * * *

Section 17.102 also issued under 38 U.S.C. 109, 1711, 1729, 1784, 1784A, 1785, 8111, 8153.

* * * * *

§ 17.43 [Amended]

■ 2. Amend § 17.43 by removing paragraph (b)(3).

■ 3. Amend § 17.44 by revising paragraph (a) to read as follows:

§ 17.44 Hospital care for certain retirees with chronic disability (Executive Orders 10122, 10400 and 11733).

* * * * *

(a) Persons defined in this section who are members or former members of the active United States Armed Forces must agree to pay the rate set by the Secretary of Veterans Affairs as prescribed in § 17.102(c), except that no charge will be made for those persons who are members of the Public Health Service, Coast Guard, Coast and Geodetic Survey now NOAA, and enlisted personnel of the Army, Navy, Marine Corps, Air Force, and Space Force.

* * * * *

■ 4. Amend § 17.86 by:

■ a. Revising paragraph (e); and

■ b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 17.86 Provision of hospital care and medical services during certain disasters and emergencies under 38 U.S.C. 1785.

* * * * *

(e) The cost of care for medical care and services provided under this section will be determined in accordance with the following:

(1) If the care is provided to an officer or employee of a non-VA Federal agency VA will charge the rate agreed upon by the Secretary and the head of such department or agency or the Secretary concerned. If no such rate has been agreed to, VA will charge the Inter-Agency Rate as prescribed in § 17.102(c).

(2) If the care is provided to a member of the Armed Forces VA will charge the rate agreed upon by the Secretary and the head of such branch or the Secretary concerned. If no such rate has been agreed to, VA will charge the Inter-Agency Rate as prescribed in § 17.102(c).

(3) If the care is authorized under a sharing agreement as described in 38 U.S.C. 8111 or 8153 or § 17.240, VA will charge the rate determined in accordance with the sharing agreement.

(4) If the care is provided to an individual who is responsible for the cost of the care, VA will charge the Cost-Based Rate as prescribed in § 17.102(c). Individuals will be responsible for the cost of care or services if mandated by Federal law (including applicable Appropriations Acts) or when the cost of care or services is not reimbursed by other-than-VA Federal departments or agencies.

* * * * *

■ 5. Revise § 17.102 to read as follows:

§ 17.102 Charges for care or services.

Subject to the methodology set forth in paragraph (c) of this section, and notwithstanding the provisions of § 17.101, VA shall charge for VA care and services provided in the circumstances described in this section.

(a) For hospital care or medical services provided:

(1) As a humanitarian service in a medical emergency in accordance with 38 U.S.C. 1784 or 38 U.S.C. 1784A;

(2) During and immediately following a disaster or emergency in accordance with 38 U.S.C. 1785 and § 17.86;

(3) While attending a national convention of an organization recognized under 38 U.S.C. 5902, for emergency medical treatment, in accordance with 38 U.S.C. 1711;

(4) In error, on the basis of eligibility as a non-veteran recipient of VA hospital care and medical services under title 38 U.S.C., and such an individual subsequently is determined not to have been eligible for such care or services;

(5) To a beneficiary of the Department of Defense or other Federal agency, to include for inpatient or outpatient care or services authorized for a member of the Armed Forces on active duty, a beneficiary or designee of any other Federal agency, and members or former members of a uniformed service who are entitled to retired or retainer pay, or equivalent pay; or

(6) To a retiree of the uniformed services with a chronic disability for hospital care identified in Executive Orders 10122, 10400, and 11733 as well as § 17.44.

(b) For hospital care, medical services, domiciliary care, or nursing home care provided:

(1) In error, on the basis of eligibility for such care and services as a veteran under § 17.34, § 17.36, or § 17.37, and such an individual was subsequently determined not to have been eligible for such care or services.

(2) To a discharged member of the armed forces of a nation allied with the United States in World War I or World War II in accordance with 38 U.S.C. 109.

(3) Under a sharing agreement in accordance with 38 U.S.C. 8111 or 8153 and § 17.240.

(4) Under any other provision of law that authorizes VA to provide care.

(c) Unless rates or charges are otherwise established in contract, in a sharing agreement, or under Federal law, VA will charge under this section at rates based on the Veterans Health Administration (VHA) Office of Finance Managerial Cost Accounting (MCA) Cost Reports, which sets forth the actual basic costs and per diem rates by type of inpatient care, and actual basic costs and rates for outpatient care visits. Factors for depreciation of buildings and equipment and Central Office overhead are added, based on accounting manual instructions. Additional factors are added for interest on capital investment and for standard fringe benefit costs covering government

employee retirement and disability costs. The VHA Office of Finance MCA Cost Reports are used to determine two separate rates: one rate is the general Cost-Based Rate and the other rate is the Inter-Agency Rate. These rates are published annually by VA on the internet site of the Veterans Health Administration Office of Community Care's website at *https://www.va.gov/communitycare/revenue_ops/payer_rates.asp.*

(d) The rates for prescription drugs that VA furnishes not administered during treatment are based on the actual cost of the drug plus a national average of VA administrative costs as described in § 17.101(m).

[FR Doc. 2022–25701 Filed 11–28–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[LLCAC09000 L12200000 NU0000 21X]

Notice of Proposed Supplementary Rule for Public Lands in the Cotoni-Coast Dairies Unit of the California Coastal National Monument in Santa Cruz County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rule.

SUMMARY: The Bureau of Land Management (BLM) is proposing a supplementary rule for all public lands within the Cotoni-Coast Dairies unit of the California Coastal National Monument in Santa Cruz County, California. The proposed supplementary rule would allow the BLM to manage recreation, address public safety, and provide resource protection on BLM-administered public lands within the Cotoni-Coast Dairies unit of the California Coastal National Monument.

DATES: Comments on the proposed supplementary rule must be received or postmarked by January 30, 2023 to be assured of consideration.

ADDRESSES: Written comments on the proposed supplementary rule can be delivered to the Bureau of Land Management, BLM Central Coast Field Office, 940 2nd Ave., Marina, CA 93933, or emailed to: *blm_ca_cotoni_coast_dairies@blm.gov.*

A link to this notice and a map depicting the area that would be affected by the proposed supplementary rule will be available to the public for review on the BLM website at *https://www.blm.gov/cotoni-coast-dairies,* and in the Central Coast Field Office.

FOR FURTHER INFORMATION CONTACT: Sky Murphy, Planning and Environmental Coordinator, BLM Central Coast Field Office; telephone: (831) 582–2200, email: *smurphy@blm.gov.*

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Sky Murphy. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written comments on the proposed supplementary rule should be specific, confined to issues pertinent to the proposed supplementary rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the rule that the comment is addressing. The BLM need not consider comments that the BLM receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline, or comments delivered to an address other than those listed earlier (see **ADDRESSES**).

Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Upon its completion, the final supplementary rule will be available for inspection in the Central Coast Field Office (see **ADDRESSES**). The BLM will announce the publication of the final rule broadly through the news media and direct mail to the constituents included on the BLM mail list. The BLM will also provide information to interested agencies and organizations.

II. Background

The BLM establishes supplementary rules under the authority of 43 CFR 8365.1–6, which allows BLM State Directors to establish such rules for the protection of persons, property, and public lands and resources. This regulatory provision allows the BLM to issue rules of less than national effect without codifying the rules in the Code of Federal Regulations.

III. Discussion of Proposed Supplementary Rule

The BLM completed the Cotoni-Coast Dairies Resource Management Plan (RMP) Amendment on June 23, 2021, to establish land use decisions that protect the objects and values of the Cotoni-Coast Dairies unit of the California Coastal National Monument and support responsible recreation opportunities. Public participation during planning for use and enjoyment of the Cotoni-Coast Dairies unit indicates that it will be a popular area and a supplementary rule is needed to allow for law enforcement to enforce decisions to manage recreation and protect cultural and natural resources.

Thus, the proposed supplementary rule would apply to all the BLM-administered lands in the Cotoni-Coast Dairies unit. Persons performing essential operations central to the BLM's mission would be exempt. Such persons would include, for example, members of any organized law enforcement, rescue, or fire-fighting force.

The proposed supplementary rule is needed to provide consistency and uniformity for visitors to BLM-administered lands, prevent resource damage and user conflicts, and provide greater safety to the visiting public. Therefore, a supplementary rule is necessary to address the following issues and concerns:

Resource Damage: Presidential Proclamation 9563 added the Cotoni-Coast Dairies unit to the California Coastal National Monument and identified resource objects and values to be protected. A supplementary rule is needed to ensure protection of these resources, particularly biological and cultural resources.

Public Safety: As visitation increases among all types of recreational users, so do the conflicts between user groups. In crowded areas, conflicts among users increase risk to visitor safety. Other recreationists and nearby landowners also have concerns for their personal safety, as well as damage to property. A supplementary rule is needed to avoid or minimize such conflicts.

At present, no supplementary rules are in effect for BLM-administered lands